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July 26, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., Room A325
Washington, D.C. 20554

Re: Docket No. 98-170

Dear Ms. Salas:

Herewith transmitted, on behalf of United States Cellular Corporation, are an original and four copies of its "Comments" on the "principles and guidelines" portion of the May 11, 1999 Further Notice of Proposed Rulemaking in the above-captioned docket.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,

Peter M. Connolly

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing	)	CC Docket No. 98-170
and	)	
Billing Format	)	

COMMENTS OF UNITED STATES CELLULAR CORPORATION

United States Cellular Corporation ("USCC") hereby files its Comments on the "principles and guidelines" portion of the Further Notice of Proposed Rulemaking in the above-captioned docket.[1] USCC filed comments on November 13, 1998 on the previous Notice of Proposed Rulemaking in this docket.[2]

I. The FCC Should Not Now Impose Additional Truth-in-Billing Requirements on Wireless Carriers

Following a lengthy proceeding, which included a Notice of Proposed Rulemaking, comments, and reply comments from over one hundred parties, the FCC adopted the Order and new Sections 64.2000 and 64.2001 of its Rules last May. Those rules set forth "truth-in-billing" principles to which all telecommunications carriers

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[1] In the Matter of Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, released May 11, 1999 ("Order) and ("Further Notice").

[2] In the Matter of Truth-in-Billing and Billing Format, Notice of Proposed Rulemaking, CC Docket No. 98-170, 13 FCC Rcd 18176 (1998).

must adhere as well as certain specific requirements. Some of those requirements are applicable to all telecommunications carriers but some do not apply to Commercial Mobile Radio Service ("CMRS") carriers.[3]

This exclusion was deliberate, as the FCC found that:

> "the record does not however, reflect the same high volume of customer complaints in the CMRS context, nor does the record indicate that CMRS billing practices fail to provide consumers with the clear and non-misleading information they need to make informed choices. If current CMRS billing practices are clear and non-misleading to consumers then it might be appropriate either to forbear from specific wireline rules or not to apply them in the first instance. Furthermore in some instances, the rules we have adopted might simply be inapplicable in the wireless context. For example, because CMRS carriers are excluded from equal access obligations, it appears that CMRS carriers will seldom need to indicate a new long distance provider on the bill.

Order, at ¶16.

Formulating precisely which principles and rules would apply to wireless carriers was evidently difficult. The Commission made three attempts to do so, first in the Order itself and then in two

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[3] On July 2, 1999 the OMB disapproved the information collection requirements in the May 11 Order and on July 21, 1999 the FCC postponed the compliance deadline. The Common Carrier Bureau is in the process of resubmitting the information collections and addressing OMB's concerns. Whatever the ultimate resolution of these issues may be, now is certainly not the time to go forward with additional requirements in this area.

subsequent "Errata" to the Order.[4]

The final "Erratum" explains the requirements as follows:

> "Our binding principles require that all telecommunications carriers, both wireline and wireless, ensure (1) that consumer telephone bills be clearly organized, clearly identify the service provider, and highlight any new providers; (2) that bills contain full and non-misleading descriptions of charges that appear therein; and (3) that bills contain clear and conspicuous disclosure of any information the consumer may need to make inquiries about, or contest charges, on the bill. In addition, carriers must comply with [Sections 64.2000 and 64.2001 of the Rules].

Erratum, released May 28, 1999. It should be noted that the rule cited in the Erratum specifically exempts wireless carriers from Sections 64.2001(a)(2), 64.2001(b), and 64.2001(c) of the Rules.

The number of "errata" released would indicate that the current wireless "truth-in-billing" requirements reflect the considered judgment of the FCC.

However, the Commission now proposes to overturn that judgment and impose the very requirements which it has just concluded it need not impose. Moreover, it suggests (Further Notice, ¶68) that "commenters" (presumably those supporting the existing rule) should "address the applicability of a Section 10 forbearance analysis" regarding the current requirements.

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[4] See Order, at ¶17-19; Errata, Docket No. 98-170, released May 24, 1998; Erratum, Docket No. 98-170, released May 28, 1999.

A "forbearance" analysis is misplaced here. Forbearance analysis under Section 10 of the Communications Act is properly applicable in cases where a carrier or trade association is seeking to demonstrate that the public interest would be served by the FCC ceasing to enforce a rule which (presumably) once did serve the public interest. But such analysis is not appropriate where the FCC proposes to extend its regulatory authority to carrier practices not now regulated. In the latter case the "burden of persuasion" rests with the FCC to make the case that regulation is necessary. But in this case the FCC has just concluded that it is not necessary. Accordingly, in the absence of a number of new complaints about wireless billing practices or other new evidence which would cause the FCC to overrule the conclusions it reached last May, the Commission should certainly not extend the full reach of the relevant rule to wireless carriers.

The Further Notice also does not demonstrate any understanding that wireless carriers are now and will in the near future be dealing with many new, complex and expensive federal mandates and thus that additional requirements should not be imposed without a demonstrated need for them.

The changes required, for example, by the FCC's E-911 requirements, the Federal Communications Assistance For Law Enforcement Act, the FCC's TTY and Local Number Portability

requirements, and the new obligations which will shortly be created pursuant to the Americans With Disabilities Act, to choose only a few examples, will have to be implemented over the next two years. In such a climate the Commission ought to be circumspect in imposing additional requirements on carriers, especially when, as is the case here, there is no statutory mandate to do so.

And, moreover, this is a fortiori the case where the public interest justification for moving forward with the proposed new regulations would be as weak as it is in this instance.

The first section of the new rules, which does not now apply to wireless carriers and which would be applied to them under the proposal, is Section 64.2001(a)(2), which specifies requirements for customer bills which include charges for two or more carriers. Charges must be separated by "service provider" and "clear and conspicuous" notice must be given of a change in "service provider." Those requirements are chiefly intended to deter "slamming" of customers by IXCs.[5]

As USCC (among other wireless carriers) noted in its prior comments, those provisions are not relevant to wireless carriers, as CMRS carriers do not generally bill for other carriers and also are not obliged to provide "equal access" to long distance carriers under Section 332(c)(8) of the Act [47 U.S.C. §332(c)(8)].

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[5] Order ¶28.

Wireless carriers can thus change the long distance carriers carrying their traffic without notice to customers. Hence, there was good reason for wireless carriers to be excluded from this section and that reason is as valid now as it was in May.

With respect to Section 64.2001(b), dealing with accurate descriptions of charges, wireless carriers are already subject to the fundamental principles of fairness to consumers which require essentially the same thing and there seems to be little reason to impose the same requirement on them in a different form.

Moreover, in the present competitive environment the marketplace requires wireless carriers to develop (and continually improve) clear and comprehensible bills or else lose customers to wireless competitors.

Finally, as USCC has also previously noted, there is no reason whatever to impose the requirements of Section 64.201(c), dealing with "deniable" and "non-deniable" charges, on CMRS carriers. All CMRS charges are "deniable" for these purposes, as a failure by wireless customers to pay their bills results in a cutoff of service. Accordingly, CMRS carriers would have no reason to discuss this issue in their bills.

Conclusion

For the foregoing reasons and those given previously, the FCC should not impose additional "truth-in-billing" requirements on wireless carriers.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

By: _____

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July 26, 1999

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